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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

KOREA WATER RESOURCES  
CORPORATION,

Plaintiff and Respondent,

v.

CHONG SUNG LEE,

Defendant and Appellant.

D053621

(Super. Ct. No. GIN040914)

APPEAL from a judgment of the Superior Court of San Diego County, Robert P. Dahlquist, Judge. Affirmed.

In 2004, a Republic of Korea (Korea) court issued a final money judgment against Chong Sung Lee (a San Diego County resident) in favor of Korea Water Resources Corporation (Korea Water). Korea Water then filed an action in California requesting recognition of the Korean judgment. The trial court granted Korea Water's request and, based on the Korean judgment, entered judgment in favor of Korea Water. Lee appeals from this judgment. He contends California should not recognize the Korean judgment

because he did not receive basic due process in Korea. We reject this contention and affirm the judgment.

### *Overview*<sup>1</sup>

Korea's court system includes a district court that conducts the initial trial, an appellate court (called a high court) that provides appellate review and is authorized to conduct trials de novo, and a supreme court that reviews questions of law. The trial is conducted before the district court and the high court, with no right to trial by jury. All of the evidence presented to the district court is part of the record before the high court; the parties may present new evidence and theories to the high court; and the high court is not bound by the district court's determinations. When a case is appealed to the supreme court, the supreme court's authority to review legal error includes the question of whether the law has been properly applied to the facts.

There is no compulsory pretrial discovery in Korea. Parties may obtain their own pretrial discovery from cooperative sources, and at the time of trial may request that the court order "inquiry" to investigate and develop more factual information. At trial, the parties present briefs, written evidence, and oral argument to the court. Live witness testimony may be presented with the court's permission. When there is no live

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<sup>1</sup> In the proceedings before the California trial court, information was submitted explaining Korea's judicial system, and the trial court took judicial notice of various matters concerning Korean law and Korea's judicial system. Lee filed an unopposed request that we take judicial notice of these same matters. We grant the judicial notice request. Our summation of the Korean legal system and law is based on these materials. Materials written in Korean, including the decisions of the Korean courts in this case, have been translated into English.

testimony, Korean trial hearings are brief, typically lasting only three to five minutes. During these hearings, the attorneys submit their pleadings and written evidence and argue their cases. After the parties have finished presenting their evidence and argument, the court closes the trial and the matter is submitted for decision.

In this case, Korea Water obtained its final judgment against Lee after (1) a district court trial; (2) a high court trial; (3) a reversal by the supreme court based on the lower courts' reliance on an incorrect tort theory; (4) a high court proceeding on remand wherein the court issued a judgment against Lee based on a breach of contract theory; and (5) the supreme court's affirmance of the latter high court judgment. Lee was represented by counsel in all of these proceedings.

On appeal, Lee contends the Korean judgment against him was reached without affording him basic due process. Specifically, he argues that at the remand proceedings the high court did not provide him a full opportunity to present evidence and to obtain investigation to support his defenses. He does not challenge the structure or fairness of the Korean judicial system itself. Rather, he asserts that in his particular case the Korean high court improperly applied its procedures so as to deny him basic due process.

We hold the record shows Lee was afforded basic due process in the Korean proceedings, and accordingly the trial court properly recognized the Korean judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### *First Round of Proceedings in Korean Courts*

In October 1996, Korean authorities criminally charged Lee with illegally burying industrial wastes in land Lee subsequently sold to Korea Water. Lee was convicted of

these criminal charges. Also in October 1996, Korea Water filed a civil complaint for damages against Lee in Korea's district court for the same alleged conduct of illegally burying the industrial wastes. The civil complaint alleged four theories of liability: (1) breach of warranty due to defects; (2) breach of contract due to delivery of defective property; (3) tort based on the deceitful conduct of hiding and failing to notify the buyer of the defects (i.e., fraud); and (4) tort based on the illegal act of dumping and burying the wastes.<sup>2</sup>

The district court trial was conducted at 10 hearings before a three-judge panel, during which written evidence and live testimony was presented. In April 1998, the district court rendered a judgment finding that Lee had surreptitiously and illegally dumped and buried the industrial wastes.<sup>3</sup> The district court ruled that Lee was liable for this conduct on the fourth theory of liability, i.e., tort based on the illegal act of dumping and burying the wastes.

To determine the amount of damages, the district court appointed a research team from Seoul National University to study and assess the anticipated cleanup costs. Lee's land was part of a larger tract of land purchased by Korea Water for development purposes, and other areas of this tract had also been subjected to illegal dumping and

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<sup>2</sup> Korea Water's complaint is not included in the record on appeal. The four theories of liability alleged by Korea Water are set forth in the supreme court's first decision.

<sup>3</sup> According to the findings by the Korean courts, Lee raised the land to make it level with adjacent roads and ground surface. Rather than merely using sand and earth to fill the land, he directed the site manager to bury industrial wastes in the land and to cover the wastes with sand so they would not be visible.

burying of industrial waste. The calculations in the Seoul National University report were based on the cleanup costs for Lee's land as well as the cleanup costs for the land owned by others in the development area. The district court rejected Lee's argument that the damages should be reduced in proportion to the share of land owned by him, finding that he was indivisibly liable for all the damages sustained by Korea Water. Based on the cleanup cost appraisal in the Seoul National University report, the district court ordered Lee to pay Korea Water 16.77 billion Korean won for the cost of cleaning up the wastes.

Regarding the other theories of liability alleged in the complaint, the district court's decision states: "The other claims are groundless and therefore, dismissed. (Even if the warranty liability or breach of obligation that Plaintiff selectively seeks were to be recognized, the extent of such damage cannot exceed the amount recognized above, and therefore, a separate judgment is not made thereon) . . . ."4

Lee appealed the district court's judgment to the high court. The evidentiary record presented to the district court was submitted to the high court, and a three-judge panel of the high court conducted a trial de novo at five hearings. In February 1999, the high court reached the same conclusions as the district court. The high court confirmed that Lee had illegally dumped the industrial wastes; it based his liability on the same theory used by the district court (tort for the act of illegal dumping); and it affirmed the amount of the damages. Regarding the other theories of liability, the high court's decision set forth the same language as did the district court's decision, except that the

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4 The district court did not explicitly address the third, fraud-based theory of liability (i.e., deceitful hiding and failure to notify the buyer of the defect).

high court also added a comment that Korea Water did not appeal from the district court's judgment concerning the other theories of liability.

Lee appealed the high court's judgment to the Korea supreme court. In January 2002, a four-judge panel of the supreme court rejected Lee's challenge to the high court's factual finding that Lee had engaged in illegal dumping and ruled that the finding was reasonable. After noting that Korea Water had alleged four theories of liability, the supreme court concluded that the theory relied upon by the high court—i.e., that Lee's "dumping act constitutes a tort"—was incorrect. The supreme court reasoned that Lee's act of dumping the wastes into land which at the time was his own property did not constitute a tort because it was an act towards Lee himself, not towards Korea Water who gained ownership afterwards. Accordingly, the supreme court "cancel[ed]" the high court's judgment and remanded the case to the high court for retrial to have the case "reviewed and judged again." The supreme court did not provide any specific directives to the high court concerning the required scope of the proceedings on remand.

### *Second Round of Proceedings in Korean Courts*

In the proceedings on remand from the supreme court, Korea Water filed an amended pleading, and the high court was provided with the evidentiary record from the original trials before the district and high courts.<sup>5</sup> The parties submitted written briefs and additional documentary evidence during two hearings before a new three-judge panel

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<sup>5</sup> Because the remand proceedings were essentially a continuation of the previous proceedings, Lee was not required to (and did not) file an answer to Korea Water's amended pleading.

of the high court. The record before us includes the minute orders for these hearings, as well as statements from Korean attorney Kyung Han Sohn who represented Lee at the remand proceedings before the high court. The information from Sohn, which was submitted to the California trial court via Sohn's declaration and lengthy deposition testimony, provides additional details about what occurred at these hearings.<sup>6</sup>

The minute order for the first remand hearing on June 26, 2002, states that Korea Water clarified it was only seeking to hold Lee liable for damages pertaining to the defects on the land which Lee owned. By the time of this hearing Korea Water had apparently commenced cleanup of the land, and the minute order reflects that Korea Water informed the court that it had spent 4 to 5 billion Korean won on the clean up "out of the total waste removal costs." According to Sohn, the court instructed Korea Water to provide supporting evidence concerning these cleanup expenditures at the next hearing.

The minute order for the next hearing on July 10, 2002, states that the parties submitted their briefs and presented arguments about their evidence, but provides no further details about what occurred. According to Sohn, at this hearing Korea Water submitted eight contracts showing it had agreed to pay 14.79 billion won to clear all the waste from the affected lands. Sohn argued that these contracts did not show how

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<sup>6</sup> There were no reporter's transcripts of the Korean hearings. During the original district and high court trials in Korea, Lee was represented by attorneys other than Sohn. Lee retained Sohn to represent him in the appeal to the supreme court from the first high court judgment, and Sohn continued to represent Lee until the completion of the proceedings in Korea.

much Korea Water had actually spent to remove the waste. Korea Water told the court that the cleanup had not yet been completed.

Sohn stated that at the July 10 hearing he also argued that the high court should review the issue of Lee's liability and the amount of damages and there should be further inquiry and presentation of evidence. In the brief Sohn provided to the high court at this hearing, he submitted about 15 evidentiary items refuting Lee's liability, including written testimony from Lee's half-sister (who was the site manager at the time of the illegal dumping) stating that she had falsely testified that Lee knew about the dumping which she had performed on the land.

Sohn further explained that at the July 10 hearing he requested the court to issue an order to conduct inquiry of various entities and persons, and allow him to present additional evidence concerning liability that would show Korea Water had notice of the dumping before it purchased the land and Lee did not know about the dumping. The high court denied his inquiry requests and closed the trial, stating it would issue its judgment on August 7, 2002. When the court stated its intent to end the trial, Sohn unsuccessfully requested that the court continue the trial for at least one more hearing so he could submit evidence rebutting Korea Water's damages claim.

On July 23 and 31, 2002, Sohn petitioned the high court to reopen the case. In these petitions, Sohn proffered various items of new evidence that he wanted to present to the high court concerning damages. Sohn asserted that Korea Water had completed the cleanup of the land, proffered evidence to support this claim, and argued that Korea Water should be required to submit evidence showing the actual cost for cleaning the



waste. Alternatively, if the high court was going to use the Seoul National University report to calculate damages, Sohn proffered a declaration from a California geologist who had analyzed the report and concluded it was not a reliable assessment of the cleanup costs for Lee's alleged dumping. The high court made no ruling on the requests to reopen, which as a practical matter under Korean law constituted a denial of the motions.

On August 7, 2002, the high court issued a judgment in favor of Korea Water. The high court relied on a breach of contract theory of liability against Lee, finding there was an implicit agreement that Lee would deliver the land in normal condition without the waste. Regarding damages, the high court noted that Korea Water had entered into two contracts for 14.79 billion won to clear the wastes, whereas the Seoul National University report presented at the original trial calculated the cleanup costs to be 16.35 billion won.<sup>7</sup> Noting that the appraised amount from the first trial and the contract amount were close, the high court adopted the 16.35 billion won figure from the original trial as the appropriate measure of damages. The court reasoned that the cleanup was not yet completed; there could be changes in the amount owed under the contract due to fluctuations in the quantity of the waste to be cleared; and indeed there had already been an amendment to the contract because of actual fluctuation. The high court concluded that Lee was responsible for paying a share of the cleanup costs based on the proportion

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<sup>7</sup> The original judgment against Lee was 16.77 billion won based on the cleanup cost estimate in the Seoul University report, whereas at the remand proceedings the cleanup cost estimation from the same report was depicted as 16.35 billion won. Apparently Korea Water had made some adjustments to the estimated cleanup costs, a matter that is not in dispute between the parties.

of the land owned by him. Based on his pro rata share, the high court ordered him to pay 9.22 billion won.

The high court's remand decision also concluded that liability could be based on a breach of warranty theory (shown by Lee's act of selling defective land containing an enormous amount of wastes) or a fraud theory (shown by Lee's act of selling the land without informing the buyer of the waste). However, the high court found that the damages under these theories would not be greater than those already awarded under the breach of contract theory.<sup>8</sup>

Lee appealed the high court's second judgment to the supreme court. In the appeal to the supreme court, Lee argued, among other things, that he had not been given a full trial because the high court closed the case without warning and did not allow him to submit evidence. He also argued that the evidentiary basis for the damages was erroneous and the damages were excessive. In July 2004, a new four-judge panel of the supreme court issued a decision affirming the high court judgment (except for a modification as to interest). Regarding liability, the supreme court affirmed the high court's reliance on breach of contract and warranty theories of liability.<sup>9</sup> Regarding damages, the supreme court rejected Lee's argument that his rights were violated because he was not given an opportunity to address before the high court the issues of whether

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<sup>8</sup> In the information submitted to the California trial court from Sohn, Sohn stated that the high court's remand decision found no liability on the fraud theory. Our reading of the high court's remand decision reflects a finding of fraud liability; in any event the fraud issue is not relevant to any matter on appeal.

<sup>9</sup> The supreme court did not discuss liability under a fraud theory.

Korea Water had completed the cleanup and restoration work and the total expenses for the work. The supreme court found that "the relevant facts of the case had been fully discussed" and Lee's request for further inquiry and argument concerning these matters had been properly refused.

*Proceedings in California for Recognition of the Korean Judgment*

In November 2004, Korea Water filed an action in California requesting recognition of the final Korean judgment in its favor. Lee opposed recognition of the judgment, arguing that he was deprived of basic due process in the remand proceedings before the Korea high court because he was not permitted to present his defense.

In the materials Lee submitted to the California trial court from Sohn, Sohn acknowledged that the 10 hearings before the district court provided the parties sufficient time to present their cases, and that during the first round of proceedings before the district and high courts the issue of Lee's liability was litigated and Lee had an opportunity to challenge the accuracy of the cleanup cost appraisal made by Seoul National University. However, Sohn claimed that Lee had a right to relitigate all factual and legal issues before the high court after the supreme court remanded the case for retrial to the high court.

Sohn stated that although the high court on remand was bound by the supreme court's specific determinations, the high court was otherwise free to reach the same or different conclusions as those previously made and the parties had the right to amend their claims and to submit new and different evidence and arguments. Noting that the only issue decided by the supreme court was that the tort theory of liability was incorrect,

Sohn claimed that under Korean legal procedure the high court was required to allow the parties to present new evidence and different theories.<sup>10</sup> Instead, the high court relied on the evidence submitted at the original trials and closed the trial after two brief hearings. Sohn contended that he was improperly precluded from obtaining inquiry, from presenting new evidence, and from responding to Korea Water's evidence.

Sohn acknowledged that at the second remand hearing on July 10 he had submitted his new written evidence refuting liability, but he claimed the high court should have permitted further inquiry and set another hearing during which the court would review the new evidence. Further, Sohn explained that he had made a strategic decision (which was consistent with normal procedure) to first present his evidence refuting liability at the July 10 hearing, and then to present his evidence refuting damages at subsequent hearings. Accordingly, although he had evidence to rebut the Seoul National University report by the time of the July 10 hearing, he did not submit this evidence to the high court at this time. He stated that he had not expected the high court to abruptly close the trial at the July 10 hearing. He had also expected that the damages would be measured by the actual cleanup costs because he believed the cleanup had been completed.

Sohn claimed the high court's abrupt closure of the hearing, without permitting full litigation of the issues related to liability and damages, was contrary to Korean practice

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<sup>10</sup> Sohn stated there is no requirement that the new evidence presented on remand be newly discovered, and thus the parties could present additional evidence even if it had existed (but was not presented) at the original trials.

and procedure. He stated the courts do not close a case until the parties have had a full opportunity to present argument and evidence and fair warning is given to the parties that the court intends to close the case, and a case will not be closed if either party reasonably requests an additional hearing to present his or her case. In Sohn's view, the high court should have conducted at least five hearings during the remand proceedings.<sup>11</sup>

Rejecting Lee's contentions, the trial court found Lee had been afforded basic due process at the Korean proceedings. Accordingly, the trial court recognized the Korean judgment and entered judgment in Korea Water's favor.<sup>12</sup> The trial court reasoned that Lee was provided with notice of the proceedings; he was represented by counsel throughout the proceedings; he was given ample opportunity to present evidence before the original judgment was entered by the district and high courts; and he had the opportunity to, and did, appeal the original judgment to the supreme court. Further, the trial court considered that at the proceedings on remand after reversal by the supreme court, all of the evidence from the original trials was submitted to the high court and Lee had the opportunity to present, and did present, additional evidence to the high court before the case was closed.

The trial court rejected Lee's contention that he was deprived of basic due process because the high court closed the case before he had submitted all of his additional

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<sup>11</sup> According to Sohn, the June 26 hearing on remand lasted less than five minutes, and the July 10 hearing lasted five to 10 minutes. Sohn acknowledged that this is a typical duration for Korean hearings absent live witness testimony.

<sup>12</sup> The parties stipulated that the outstanding amount of the Korean judgment (including interest) was \$14,747,692.59 in United States dollars.

evidence and declined his request for additional inquiry of third parties. Examining the entirety of the eight years of legal proceedings in Korea, the trial court assessed that Lee "literally had years to gather and submit his evidence"; there was no indication that Lee's opportunity to submit evidence in the original proceedings before the district and high courts was limited in any way; and the evidence presented at these original trials was received and reviewed by the high court at the remand proceedings.

Additionally, the trial court reasoned that Lee could have elected to present all of his evidence at the second hearing on remand, and his failure to do so was the result of his own strategic decision to wait until Korea Water had submitted its evidence on the cleanup issue at the second hearing. Further, the trial court stated that "[d]ue process did not require the . . . High Court to give the parties unfettered freedom to prolong the proceedings for another extended period while additional evidence was gathered or additional third[ ] parties were questioned." The trial court also considered that Lee's contention that the high court on remand "materially departed from established Korean law and practice" was rejected by the "ultimate authority on Korean law and practice—the Supreme Court of Korea[ ]."

## DISCUSSION

On appeal, Lee contends he was deprived of basic due process when the high court closed the remand trial without giving him a full opportunity to present evidence and to obtain further investigation.

California courts are authorized to recognize foreign money judgments that are "final and conclusive and enforceable where rendered . . . ." (Former Code of Civ. Proc.,

§ 1713.2.)<sup>13</sup> However, a foreign judgment is not considered "conclusive" if the judgment was "rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process," or if the foreign court did not have personal or subject matter jurisdiction. (§ 1713.4, subd. (a)(1)-(3).) Further, California courts need not recognize foreign judgments under certain circumstances, including when the defendant did not receive notice of the foreign proceedings in sufficient time to defend, the judgment was obtained by extrinsic fraud, or the cause of action or defense on which the judgment is based is repugnant to public policy. (§ 1713.4, subd. (b)(1)-(3).) Additionally, the Code of Civil Procedure contains a savings clause giving California courts broad discretion to decline recognition, stating: "This chapter does not prevent the recognition or nonrecognition of a foreign judgment in situations not covered by this chapter." (§ 1713.7.)

Consistent with these Code of Civil Procedure provisions, it has long been recognized that a foreign judgment should not be recognized if "it was obtained in a manner that did not accord with the basics of due process." (*Bank Melli Iran v. Pahlavi* (9th Cir. 1995) 58 F.3d 1406, 1410.) As explained in the Restatement Third of Foreign Relations Law of the United States: "A judicial system may fail to meet the criteria of fairness in general [or] a particular case may disclose such defects as to make the

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<sup>13</sup> The Code of Civil Procedure sections governing recognition of foreign money judgments were amended effective January 2008. This case is governed by the former version of the relevant Code of Civil Procedure sections. (20 West's Ann. Code Civ. Proc. (2009 Supp.) §§ 1713, 1724, subd. (b), pp. 15, 26.) Subsequent unspecified statutory references are to the former sections of the Code of Civil Procedure.

particular judgment not entitled to recognition or enforcement." (*Id.* at § 482, com. b, p. 606.)

However, basic due process does not require adherence to any particular set of procedures. (See *Rest. 3d, supra*, § 482, com. b, p. 605; *Bird v. Glacier Electric Cooperative, Inc.* (9th Cir. 2001) 255 F.3d 1136, 1142; *Ingersoll Milling Machine Co. v. Granger* (7th Cir. 1987) 833 F.2d 680, 687; *Tonga Air Services, Ltd. v. Fowler* (Wash. 1992) 826 P.2d 204, 214.) Rather, due process is satisfied "where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice . . . ." (*Rest. 3d, supra*, § 482, com. b, p. 605, quoting *Hilton v. Guyot* (1895) 159 U.S. 113, 202.) Courts are generally inclined to recognize foreign judgments "'unless a foreign country's judgments are the result of outrageous departures from our notions of 'civilized jurisprudence.''" (*Bird, supra*, at p. 1142.)

*Bank Melli Iran v. Pahlavi, supra*, 58 F.3d 1406 is illustrative of a case in which fundamental due process defects warranted a refusal to recognize the foreign judgment. The court in *Bank Melli* declined to recognize an Iranian foreign judgment under circumstances where the defendant "could not expect fair treatment from the courts of Iran, could not personally appear before those courts, could not obtain proper legal representation in Iran, and could not even obtain local witnesses on her behalf." (*Id.* at p. 1413.) In contrast, when the record shows the defendant received a meaningful opportunity to be heard before the foreign tribunal, courts have concluded recognition of



the foreign judgment is proper. (See, e.g., *Tonga Air Services, Ltd. v. Fowler*, *supra*, 826 P.2d at pp. 211-214; *British Midland Airways, Ltd. v. Internat. Travel, Inc.* (9th Cir. 1974) 497 F.2d 869, 871; *Pariente v. Scott Meredith Literary Agency, Inc.* (S.D.N.Y. 1991) 771 F.Supp. 609, 617.)

We are not persuaded by Lee's contention that he was deprived of basic due process because the high court closed the remand proceedings before he had submitted all his evidence and without permitting additional investigation. The record shows Lee received a meaningful opportunity to be heard in the Korean courts. The factual issues of his liability and the amount of damages were litigated during the first round of proceedings before the district and high courts. The supreme court remanded the matter to the high court because it had committed a legal error by relying on an incorrect theory of tort liability. On remand, the high court was provided with the evidentiary record from the first round of trials, and received new evidence from the parties. The high court took the matter under submission, and then issued a decision adopting the breach of contract theory that had been pleaded at the original proceedings, and calculating a damages award (less than the original damages award) based on evidence that had been submitted at the original proceedings.

Lee argues that his fundamental due process right was violated because under Korean law he had an absolute right to present new evidence at the remand proceedings before the high court. Assuming this is a correct statement of Korean law, the argument fails because Lee *was* afforded the opportunity to present new evidence at the remand proceedings and, indeed, he included new evidentiary items in his brief submitted to the

high court on remand. In his briefing on appeal, Lee states that the high court refused his evidentiary submission at the July 10 remand hearing. Although the record shows the high court denied his request for further *investigation*, it does not show the high court failed to consider the new written evidence he submitted at the second remand hearing on July 10.

Sohn stated in his deposition that it did not appear the high court reviewed either his or Korea Water's evidentiary submissions at the short July 10 hearing. The fact that the high court did not review the parties' evidentiary submissions while conducting the hearing does not mean the court did not review the submitted evidence after taking the matter under submission and before issuing its decision on August 7. Indeed, the high court's August 7 decision refers to Korea Water's contractual evidence, which shows that it reviewed Korea Water's evidence and supports that it likely reviewed Lee's submitted evidence as well. This inference is further supported by Sohn's deposition testimony stating that at the July 10 hearing, the high court (in accordance with normal procedure) asked the parties whether they would admit the authenticity of their opponent's submitted evidence, which suggests the high court intended to review this evidence.<sup>14</sup>

When considered in the context of the information in the record, Lee's due process challenge to the remand proceedings cannot be premised on a claim that he was denied

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<sup>14</sup> According to Sohn, in response to the high court's inquiry concerning authenticity of the evidence, he stated he would respond at the next hearing (which he had expected would occur) because Korea Water's contractual evidence was lengthy. Similarly, Korea Water told the court it would respond to the authenticity of Lee's evidence after the hearing, which was a permissible procedure.

the right to present *any* new evidence. Rather, his due process contention must be limited to a claim that that he was denied the right to present *additional* new evidence once the high court refused his request for further investigation, closed the trial at the second remand session, and declined his requests to reopen the proceedings for further evidentiary submissions.

Basic due process does not require a court to permit expanded investigation and presentation of new evidence on factual issues that have already been litigated. When the supreme court entered its judgment remanding the case for a new trial, it did not direct that the facts concerning liability and damages necessarily needed to be relitigated through presentation of additional evidence. Rather, it ruled that the tort theory relied on by the high court was legally improper; it left open the possibility that liability could be legally proper under other theories of liability; and it directed the high court to "review[] and judge[] [the case] again."<sup>15</sup>

Regarding liability, the breach of contract theory relied upon by the high court on remand had been pleaded in the original complaint filed in the district court. Thus, Lee

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<sup>15</sup> As legal authority for his position that his evidentiary presentation was improperly truncated at the remand proceedings, Lee cites Korean Code of Civil Procedure section 406 which governs cases on remand to the high court from the supreme court. This section does not expressly refer to the scope of any required evidentiary presentation on remand. The section states in relevant part: "(2) The court to which a case has been remanded or transferred *shall give decision on the basis of fresh oral argument*. Provided, that it shall be bound by the findings of the re-appellate court as to facts and law which constituted the reason for quashing." (Italics added.) A slightly different translation of this same provision states: "(2) The court to which a case has been remanded or transferred *shall render a judgment on the basis of fresh pleadings*. In this case, it shall be bound by the factual and legal findings of the court of final appeal which constituted the reasons for reversing the judgment." (Italics added.)

had an opportunity to litigate the facts concerning the breach of contract theory during the original trial. To support his due process challenge, Lee argues that the breach of contract theory was not litigated at the original trial before the high court because—as noted in the high court's original decision—Korea Water did not appeal from the district court's ruling concerning the contract theory. This does not show a deprivation of fundamental due process because Lee had an opportunity to present the facts relevant to the breach of contract theory at the first trial before the district court (conducted over the course of 10 hearings), and the district court's factual record was transmitted to the high court during the remand trial. Thus, in addition to Lee's evidentiary submissions at the July 10 remand hearing, the high court on remand was provided with Lee's factual evidence from the district court trial concerning the breach of contract theory.<sup>16</sup>

Regarding damages, the high court's decision on remand used the same measure of damages (cleanup costs) and the same Seoul National University report that had been used at the original district and high court trials. Lee had the opportunity to challenge the Seoul National University cleanup cost appraisals at the original trials, and he also could have included additional challenges in his evidentiary submission at the July 10 remand

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<sup>16</sup> As set forth above, the district and high courts' original decisions state that Korea Water's other alleged theories (apart from the tort theory relied upon by these courts) were "groundless," and alternatively there was no showing the damages would be higher under the other alleged theories. The courts' statements referring to the other theories as "groundless" do not suggest that Lee was deprived of basic due process when the high court on remand (and the supreme court in its second review) ultimately relied upon the breach of contract theory to impose liability. The district and high courts' original decisions contain no explanation of the reasoning underlying the "groundless" statements, and it is undisputed that any factual findings or legal conclusions during the first round of trial proceedings were not binding on the high court at the remand trial.

hearing. Because the high court relied on the same damages evidence as was presented at the original trials, there was no fundamental unfairness in the manner in which Lee incurred the final damages judgment.

Lee contends that the high court violated his due process rights because at the first remand hearing it led him to believe that damages would be based on actual cleanup costs, but at the second remand hearing it suddenly closed the trial and then changed its focus by ultimately relying on the estimated cleanup costs in the Seoul National University report without giving him an opportunity to challenge that report with the new evidence from the California geologist.

Lee's claim that at the first remand hearing he was led to believe damages would be based on actual cleanup costs is questionable given that the high court's minute order from the first remand hearing states: "[Korea Water's] attorney further expounds that [Korea Water] had expended 4,000,000,000 to 5,000,000,000 Korean Won *out of the total waste removal costs.*" (Italics added.) This statement suggests Korea Water informed the court how much it had spent out of the total cleanup costs, which would have alerted Lee at the first remand hearing that Korea Water was maintaining that cleanup was not yet completed and hence damages could not be based on actual cleanup costs. Assuming this is what occurred at the first remand hearing, Lee cannot reasonably claim that prior to the second remand hearing he did not realize that there were issues concerning completion of the cleanup and that he should submit his rebuttal evidence concerning cleanup completion and the Seoul National University report.

Moreover, regardless of any limitations placed by the high court on the litigation of damages on remand, the record shows there was no basic unfairness in the high court's ultimate imposition of damages based on the Seoul National University report. As stated, Lee had a full opportunity to rebut the Seoul National University report at the original trials. It was not fundamentally unfair for the high court to decline Lee's request to reopen the proceedings to consider further evidence concerning damages and to instead rely on the already-adjudicated Seoul National University report in its final decision.

We conclude the record shows Lee had his "day in court" concerning the facts relevant to liability and damages and was afforded basic due process. To the extent the high court limited relitigation of the factual issues at the remand proceedings by declining further investigation and additional hearings, the record shows Lee nevertheless had a full opportunity to present evidence at the earlier proceedings.

#### DISPOSITION

The judgment is affirmed. Lee to pay Korea Water's costs on appeal.

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HALLER, J.

WE CONCUR:

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McCONNELL, P. J.

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McDONALD, J.